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C O N F I D E N T I A L SECTION 01 OF 03 NAIROBI 002482

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SUBJECT: CORRUPTION IN KENYA: HOW FULL - OR EMPTY - IS THE GLASS?

Ref: Nairobi 1720

Classified by Econ Counselor John Hoover for reasons 1.4
(B) and (D).

¶1. (C) Summary: The bad news in the war against corruption in Kenya is that there continues to be no genuine political will at the leadership level to aggressively investigate and prosecute major graft cases. The desperation of the NARC administration as it positions itself for next year's election only reinforces this. However, neither Kenyans nor donors are fooled by the hollow rhetoric the leadership continues to put up as an empty substitute for real action. The good news is that a number of important institutional reforms are progressing quietly below the leadership level, and these deserve our attention and support. Not least of these are reforms aimed at ultimately reducing the still-immense opportunities for corruption in government procurement. Kenya will be seeking additional U.S. assistance in this regard when it submits a business plan requesting Millennium Challenge Corporation Threshold funding later this year. End summary.

¶2. (SBU) Kenya is now well past the half-point in the administration of the National Rainbow Coalition (NARC), which came to power on a surge of popular support, in large part due to its pledge to clean up government and eliminate corruption. On this issue, an important question arises: are things getting better, or are they getting worse? The NARC administration continues to trumpet its successes, while also acknowledging the challenges ahead. The public, on the other hand, appears utterly disillusioned, and there is a widespread belief, shared by many donors, that there will be little tangible progress in the fight against corruption in the run-up to elections at the end of 2007. We tend towards this latter view, while also recognizing some good trends and initiatives that deserve our attention and support in the meantime.

Starting at the Top: Still No Political Will

¶3. (C) In our analysis, the principle bad news is that there remains virtually no genuine political will or commitment at the leadership level in Kenya to fighting corruption, or at least not the most egregious cases of graft involving anyone in Cabinet or at State House. Completion of investigations being carried out by the Kenya

Anti-Corruption Commission (KACC) of the Anglo-Leasing-style cases (which number 18, totaling \$800 million; see reftel), are delayed. KACC Director Aaron Ringera and his deputies have complained publicly that they have been unable to question key suspects because they have fled the country. That seems fair enough, but there are also strong suspicions that Ringera is using these challenges as an easy pretext to either drag out the investigations endlessly or kill them outright.

¶4. (C) The conventional wisdom holds that Ringera is personally clean and his KACC capable. However, his strong historic and tribal ties to Kibaki and his inner circle make it unpalatable for Ringera to aggressively take the Anglo-Leasing investigations to their ultimate conclusion because doing so would eventually reveal the culpability or at least complicity of President Kibaki himself.

Prosecutions: From Bad to Worse

¶5. (C) The record is worse on the prosecutorial front. Except for the conviction of senior HIV/AIDS official Margaret Gachara in 2004 (she was pardoned a year later by Kibaki), the NARC administration cannot claim a single "big fish" corruption conviction to date. Because of this failure and the perception that Kenya's legal system appears rigged to prevent prosecution of anyone with money and influence, both the World Bank and the IMF have made "prosecutorial capacity" a major theme in recent months. Behind closed doors, but with surprising assertiveness, the World Bank has advocated the replacement of Attorney General Amos Wako, a politically pliant survivor who

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appears unwilling to take on any high-profile prosecutions handed him by the KACC involving sitting or recently sitting senior-level GOK officials.

DPP: Powerless and Poor

¶6. (C) The GOK has taken the hint given by the World Bank and the IMF and is advertising contracts for private attorneys to step in and prosecute cases investigated by the KACC, but for which the Department of Public Prosecutions (DPP) lacks the capacity to successfully prosecute. While this sounds like a neat short-term fix, special prosecutors of this sort have been used before, at exorbitant cost and without notable success.

¶7. (C) Worse, bringing in hired guns from the outside will only hasten the downward spiral at the DPP, where prosecutors are paid 5 percent vs. either their KACC counterparts or what special prosecutors from the private sector will receive. In this environment, the DPP has found it impossible to attract and retain legal talent, and morale is virtually nil. USAID Kenya's Democracy and Governance Office has reduced its planned assistance to the DPP because the GOK has refused to act on any of the prerequisite reform commitments made earlier to strengthen the DPP by, for example, equalizing pay for DPP attorneys.

GOK Turns Again to Empty Rhetoric

¶8. (C) The decision to hire special prosecutors is symptomatic of a general tendency on the part of the GOK leadership when dealing with corruption. Rather than make the difficult political decisions necessary to restore its credibility, it chooses instead to engage in rhetoric and empty gestures to create the perception of real action. Nowhere was this tendency better illustrated than in the

May 30 National Anti-Corruption Plan (NACP) Forum, whose slogan was "Kenyans Arise! Fight Corruption Now." The event was kicked off by prayers and an anti-corruption ballad sung by a musical troupe to the tune of "My Darling Clementine." All in attendance were encouraged to sing along for "synergy of purpose."

¶9. (C) The forum was staged by the KACC's Aaron Ringera to confer legitimacy on a draft 100-page national anti-graft strategy that is six years old, and which will lead to the creation of yet another institution, the NACP Secretariat, to oversee its implementation. The highlight of the show was some tough rhetoric from Justice Minister Martha Karua, who acknowledged that Kenya is "under siege...by a monster." But otherwise, donor reps in attendance shrugged the event off as yet another example of window dressing to cover up the lack of real action in fighting corruption. The plan itself is of little value - a lawyerly compendium of past, present and future trends, actions, and actors, none of which are new or very specific.

TI Index Shows the Public Not Fooled

¶10. (SBU) The Kenyan public is not fooled. The just-released Kenya Bribery Index from Transparency International Kenya found that corruption experienced by the public in 2005 increased. Close to half of survey respondents reported encounters with bribery, up from a third in 2004, and the number of bribes paid doubled from over one for every two people in 2004 to 1.2 bribes paid per person in 2005. The only good news is that the cost of bribes on average continued a downward trend.

Now for the Good News - And There is Some

¶11. (SBU) It would be wrong and unfair, however, to completely write off Kenyan efforts to improve governance and fight corruption. Despite the insincerity and defensiveness at the leadership level, there are a number

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of important longer-term initiatives being led by officials at the sub-leadership level that deserve recognition and support. Not least are procurement reforms being led by the 50-person strong Public Procurement Directorate (PPD) in the Ministry of Finance. The PPD, now led by a world-class procurement expert on leave of absence from the World Bank, is working to complete new procurement regulations and establish a Procurement Oversight Authority. USAID is already supporting this effort, and the GOK will be requesting an additional \$12 million in Millennium Challenge Corporation Threshold assistance for procurement reform when it completes its MCC Threshold business plan, perhaps as early as July.

¶12. (SBU) Procurement reform itself is a subset of a wider set of ongoing public financial management reforms aimed at improving budget planning, and then strengthening the links between budgeting, expenditure, procurement, accounting, and actual results in terms of service delivery by line ministries. In a related set of reforms, the GOK has begun to use performance-based management as the cornerstone of civil service reform. This has thus far principally taken the form of performance contracts for senior civil servants. In theory, these contracts will eventually be linked to the budget planning process for each line ministry. It is an effort so ambitious that it risks collapse. But if it is even partially successful, it will change the way Kenya is governed in the years ahead, with enormous cost savings.

¶13. (C) Finally, though again the picture is mixed, the GOK is moving ahead with key structural reforms. Under aggressive leadership at the relevant ministry, the GOK is at last preparing to privatize the state-owned monopoly phone company. This follows the recent partial privatization of the country's monopoly power generating firm, and plans are on track to turn the dilapidated national railway over to a private concessionaire later this year. Lastly, the GOK announced last week that GDP growth in 2005 has been revised upward to 5.8 percent. While this is still far below the country's potential, the GOK does deserve credit for creating and maintaining a stable macro-environment conducive for further growth.

Comment

¶14. (C) We should not expect any dramatic breakthroughs, such as successful high-level prosecutions, between now and election time in late-2007. The Kibaki administration, which was probably never really committed to tackling grand scale corruption in the first place, will be even less inclined to be so now, grand rhetoric from the likes of Martha Karua aside. Kibaki's meeting in late May with ex-President Moi points out that in the current campaign atmosphere, Kibaki can ill-afford to offend anyone--not even his ostensible rivals. As a result, KACC's investigations are likely to go nowhere, no one important will be prosecuted, and the culture of impunity will live on, to the dismay of the average Kenyan. But we must also keep an eye on and nurture the genuine attempts to bring about the institutional changes that will someday, one hopes, reduce or eliminate the loopholes on which corruption thrives. In this light, we should look positively at supporting procurement reform through the MCC's Threshold program.

Bellamy